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Senator Campbell: Rolling up our sleeves on Indian trust reform

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During my tenure on the Senate Indian Affairs Committee, the focus of trust reform has evolved. When I was first elected to the Senate in 1992 and became a member of the committee, the focus was on congressional efforts to enact the American Indian Trust Fund Management Reform Act of 1994. During the summer of 1996 attention centered on Judge Lamberth's courtroom as Interior Secretary Bruce Babbitt tried unsuccessfully to defend the Department's failure to fulfill its trust obligation.

When I became Chairman in 1997, the focus shifted to then-Special Trustee Paul Homan's effort to fulfill his responsibility to develop and submit the "Strategic Plan" required by the 1994 Reform Act. Now, as the Vice-Chairman of the Committee I am encouraged that the joint Tribal Leaders DOI Trust Reform Task Force ("Task Force") consultation process is the center of attention.

Indian tribes and the Department are the entities that know the most about the problems that have caused the trust reform mess. The Task Force process gives them an opportunity to negotiate about the framework and priorities for trust reform. Both Congress and, presumably, Judge Lamberth will be watching this process closely.

At the Committee on Indian Affairs' just-convened June 26 hearing to learn more about the nearly 30 reorganization proposals submitted to the Task Force, both the Federal and Tribal Task Force co-chairs indicated that the discussions have eliminated most proposals and now center on just three ideas. They also indicated that much more discussion needed to take place.

The inclusion of Indian tribes in the trust reform effort through the Task Force process is one of the most hopeful developments I have seen in all my years of involvement with trust reform issues. Many of us were surprised that the previous Administration developed two High Level Implementation Plans to reform its trust management activities without any effort to incorporate or even to determine what Indian tribes thought about these plans. Both of these plans have now been thoroughly discredited and shelved.

In the wake of the June 26 hearing, it strikes me that we need a renewed effort at focusing attention on the actual source of the problems that have caused the trust reform fiasco and continue to make our task more difficult. Someone once said that for every person attacking the roots of evil there will be at least a hundred who are only attacking its leaves.

I think when we look back at trust reform efforts in the future it will be very easy to determine which efforts were directed at the roots of the problem and which were directed at the leaves.

At times efforts to address the source problems will be very complicated. For example, through the Indian Land Consolidation Act of 2000 (PL 106-462) Congress addressed the interrelated problems of probate, leasing and transfer of fractionated allotments. Because of the number of complicated issues addressed in that legislation, coordination and cooperation was necessary and the assistance of forward-looking tribal leaders and the National Congress of American Indians is proving essential to successfully enacting that law.

Another complicated root problem is the maze of impossibly complicated laws that apply to the probate of Indian trust land. At the Committee's recent hearing on S. 1340, the Indian Probate Reform Act of 2002, Assistant Secretary McCaleb testified that the probate laws of as many as 33 different states apply in Indian probates. Both the Department, many Indian Tribes, and Indian Country Today have endorsed the ideas embodied in S. 1340, which would establish a uniform set of probate rules that would apply unless an Indian tribe decides to enact its own specific probate rules.

Sometimes the effort to get at the root of these problems will be surprisingly simple. For example, tribal leaders such as the former Chief of the Osage Indian Tribe and the tribes of the Inter-Tribal Monitoring Association (ITMA) sought the Committee's help in removing the threat caused by the Arthur Andersen reconciliation reports that were provided to Indian tribes in 1996. The ITMA tribes feared that they would be forced to file breach of trust suits against the United States within six years of receiving those reports or claims would be barred by the statute of limitations. With this Administration's support, the House and the Senate passed S. 1857, An Act to Encourage the Negotiated Settlement of Tribal Claims Against the United States, which was signed by President Bush in March of this year.

In my view, the Task Force process brings all the stakeholders together and encourages tribal leaders to become involved in a concentrated effort to address the fundamental problems that have led to the trust management crisis. This will not necessarily create a big splash or gather a great deal of public attention, but it will produce concrete results with which

Congress can work to further push the boundaries of trust reform as it did with the 1994 Trust Reform Act, the 2000 Indian Land Consolidation Act Amendments, and the statute of limitations relief brought by S. 1857.

I believe that together -- the Indian tribes, the Executive Branch and the Congress -- can and must make the structural changes that are necessary to update and overhaul trust management and in the process bring justice to American Indians.

Among other key committee assignments, Sen. Campbell, R-Colo., is the vice-chairman of the Senate Committee on Indian Affairs; and is a member of the Senate Energy and Natural Resources Committee.
